

**CITY OF NEWARK
DELAWARE**

**PLANNING COMMISSION
MEETING**

November 3, 2009

7:00 p.m.

Present at the 7:00 p.m. meeting were:

Chairman: James Bowman

Commissioners Present: Peggy Brown
Mary Lou McDowell
Kass Sheedy

Commissioners Absent: Ralph Begleiter
Angela Dressel

Staff Present: Roy H. Lopata, Planning and Development Director

Chairman James Bowman called the Planning Commission meeting to order at 7:00 p.m.

1. THE MINUTES OF THE OCTOBER 6, 2009 PLANNING COMMISSION MEETING.

MOTION BY SHEEDY, SECONDED BY BROWN, THE MINUTES OF THE OCTOBER 6, 2009 PLANNING COMMISSION MEETING WERE ACCEPTED AS PRESENTED.

VOTE: 4-0

AYE: BOWMAN, BROWN, MCDOWELL, SHEEDY

NAY: NONE

ABSENT: BEGLEITER, DRESSEL

MOTION PASSED UNANIMOUSLY

2. REVIEW AND CONSIDERATION OF THE REZONING FROM BN (NEIGHBORHOOD SHOPPING) TO BB (CENTRAL BUSINESS DISTRICT), MAJOR SUBDIVISION, AND A SPECIAL USE PERMIT FOR THE .227 ACRE PROPERTY AT 109-111 ELKTON ROAD FOR A PROPOSED MIXED USE BUILDING WITH 2,456 SQUARE FEET OF FIRST FLOOR COMMERCIAL USE AND SIX UPPER FLOOR APARTMENTS.

Mr. Lopata: Let me point out one minor error in the report regarding the size of the property, which results in the revised rezoning Exhibit A that is now before you. The parcel is not .227 acres, it is .277 acres. That is going to be corrected in the report that goes into your minutes. That also affects the density calculation which appears on page 4. The correct density is 21.13 units per acre. That is mentioned on page 4 and later on page 6, item 5. The acreage is .277 as shown on Exhibit A that you have in front of you and the density is 21.66 units per acre.

Mr. Lopata summarized his report for the Planning Commission that reads as follows:

“On August 27, 2009, the Planning and Development Department received applications for the rezoning, major subdivision, and a special use permit for the development of the .277 acre property at 109-111 Elkton Road. The now vacant “Daffy

Deli” takeout restaurant building is located at the site. The applicants, and equitable owners of the property -- Elkton Road, LLC., -- are requesting a rezoning from the existing BN (neighborhood shopping) to BB (central business district) and major subdivision to construct a mixed use retail and residential building that will contain 2,456 square feet of first floor commercial use and six apartments on the upper two floors of the facility. The applicants have also applied for the BB zoning required special use permit for apartments. Through approval of the subdivision, the existing property line between this and the adjoining parcel at 119 Elkton Road will be relocated.

Please see the attached McBride and Ziegler rezoning, subdivision and special use plan and supporting materials.

The Planning and Development Department’s report on the 109-111 Elkton Road project follows:

Property Description and Related Data

1. Location:

109-111 Elkton Road; approximately 240 feet from the intersection of Beverly and Elkton Roads.

2. Size:

.277 acres

3. Existing Land Use:

Small two-story takeout restaurant (with vacant apartments above) and paved parking area.

4. Physical Condition of the Site:

The 109-111 Elkton Road property is a fully developed site including a small commercial/residential building and paved parking area. In terms of topography, the site is very level with almost no perceptible slope.

Regarding soils, according to the United States Department of Agriculture’s Natural Resources Conservation Service and the subdivision plan, the 109-111 Elkton Road property contains Keyport Silt Loam soil. According to the Natural Resources Conservation Service, this soil has “moderate” development limitations for the use proposed.

5. Planning and Zoning:

The 109-111 Elkton Road property is zoned BN. BN is a neighborhood commercial district that permits the following:

1. Public transportation facilities, bus stops, etc.
2. Municipal utility Uses
3. Social Club, fraternal, social service, union and civic organization
4. Non-profit community recreation centers
5. Studio for artists, designers, photographers, with a maximum floor area of 5,000 square feet.
6. Instructional, business, or trade schools with a maximum floor area of 5,000 square feet.
7. Offices for professional services for administrative activities with special conditions
8. Finance institutions, banks, loan companies.
9. Retail stores limited to the sale of gifts, antiques, flowers, jewelry, newspapers, books, hobbies, stationary, art supplies, radio or television, hardware, variety,

- clothing, drug stores, beverages or liquors, with a maximum floor area of 5,000 square feet.
- 10. Personal service establishments with a maximum floor area of 5,000 square feet.
- 11. Laundromats
- 12. Restaurants, excluding fast food and drive-in restaurants
- 13. Retail food stores such as bakery restaurants, bakeries, candy, convenience grocery, meat markets, delicatessens, but excluding the preparation of goods for sale off the premises.
- 14. Neighborhood shopping center with special requirements.
- 15. Related indoor storage facilities with special requirements.
- 16. Accessory buildings and accessory uses.
- 17. Repair and servicing with special requirements.
- 18. Photo developing and finishing.

BN zoning also permits, with a Council granted Special Use Permit, the following:

- 1. Police and fire station
- 2. Electric and gas substation, and telephone central office with special requirements
- 3. Churches and other places of worship
- 4. Libraries, museums and art galleries
- 5. Drive-in and curb service for other than eating establishments with special requirements
- 6. Restaurants with alcoholic beverages

The requested BB zoning, our downtown commercial district, permits the following:

- A. Retail and specialty stores.
- B. Retail food stores up to 5,000 square feet in maximum floor area, with special conditions.
- C. Restaurants, bakery and delicatessens.
- D. Banks and finance institutions.
- E. Offices for professional services and administrative activities.
- F. Personal service establishments.
- G. Studios for artists, designers, photographers, musicians, and sculptors.
- H. Repair and servicing, indoor and off-site of any article for sale, which is permitted in this district.
- I. Related indoor storage facilities as accessory uses with special requirements.
- J. Accessory uses and accessory buildings.
- K. Public parking garage and parking lot.
- L. Public transit facilities.
- M. Social club, fraternal, social service, union and civic organizations, except on ground floor locations.
- N. Photo developing and finishing.

BB also permits, with a Council granted Special Use Permit, the following:

- A. Retail food stores with more than 5,000 square feet in area.
- B. Drive-in and curb service for other than eating establishments.
- C. Fast-food restaurants with special requirements.
- D. Motels and hotels.
- E. Commercial in-door recreation and in-door theaters.
- F. Instructional, business or trade schools.
- G. Electric gas and telephone central offices and telephone central offices and substations with special requirements.
- H. Tower, broadcasting or telecommunications on existing buildings or structures with special requirements.
- I. Police and fire stations.
- J. Library, museum and art gallery.
- K. Church or other place of worship.
- L. Restaurant, cafeteria style.

- M. Apartments, except on ground floor locations, with special requirements.
- N. Restaurants with alcoholic beverages, with special requirements.

Regarding BB zoning area requirements, the 109-111 Elkton Road plan meets or can meet all the applicable BB zoning requirements.

Regarding nearby and adjacent properties, the property immediately adjacent to the 109-111 Elkton Road property on the east contains a multi-level University of Delaware parking garage and access roadway to that facility. The property west of the site on Elkton Road contains a three-story mixed use facility, owned by the applicants, and zoned BB. This project was approved for rezoning, major subdivision, and a special use permit by City Council on April 28, 2008. The RM (garden apartments – multi-family dwellings) zoned University Garden apartments development is located immediately south of the site. The recently completed “Millyard” development, with commercial on the first floor and upper floor apartments is located immediately across Elkton Road from the property.

Regarding comprehensive planning, the Newark Comprehensive Development Plan IV calls for either commercial “auto-oriented,” or “pedestrian-oriented,” uses in the Planning Section within which the 109-111 Elkton Road property is located. Also regarding comprehensive planning, the recently revised Comprehensive Development Plan IV included within the “Downtown Development District,” -- the area on Elkton Road to Apple Road, and specifies the following:

“The recommended uses, therefore, in this district are first floor specialty and traditional retail shops, with a balanced concentration of food and entertainment. Apartments and offices are proposed for upper floors. Any additional apartments, however, must be carefully and closely evaluated in terms of their impact on downtown traffic and parking; their compatibility with existing buildings in terms of design, scale and intensity of development; the contribution of the overall project, including proposed apartments, to the quality of the downtown economic environment; and potential significant negative impacts on nearby established businesses and residential neighborhoods.”

Regarding the proposed density of the 109-111 Elkton Road plan, the major subdivision plan calls for 21.66 units per acre. The reconfigured adjoining 119 Elkton Road property, by way of comparison, calls for 21.13 units per acre.

Status of the Site Design

Please note that at this stage in the Newark subdivision review process, applicants need only show the general site design and the architectural character of the project. For the site design, specific details taking into account topographic and other natural features must be included in the construction improvement plan. For architectural character, the applicants must submit at the subdivision plan stage of the process color scale elevations of all proposed buildings, showing the kind, color and texture of materials to be used, proposed signs, lighting and related exterior features. If the construction improvement plan, which is reviewed and approved by the operating departments, does not conform substantially to the approved subdivision site and architectural plan, the construction improvement plan is referred back to City Council for its further review and reapproval. That is, initial Council subdivision plan approval means that the general site concept and more specific architectural design has received City endorsement, with the developer left with some limited flexibility in working out the details of the plan -- within Code determined and approved subdivision set parameters -- to respond in a limited way to changing needs and circumstances. This does not mean, however, that the Planning Commission cannot make site design or related recommendations that City Council could include in the subdivision agreement for the project.

Be that as it may, as you can see from the subdivision plan, the 109-111 Elkton Road project calls for a three-story building with first floor commercial uses and six upper floor

apartments. Parking is shown to the rear and west side of the building with an access way from Elkton Road shared with the adjoining 119 Elkton Road property. A stormwater management facility is shown at the northeast corner of the site and screened dumpsters are located along the property's eastern boundary at the end of the parking area.

Regarding the proposed building facade, several alternative designs were provided by the applicant, on a voluntary basis, for review by the Downtown Newark Partnership's Design Review Committee. The Committee eventually recommended aspects of several designs that were incorporated by the applicant into the facade drawings that are attached for your review. The Committee felt that with the configurations that had been suggested, the 109-111 Elkton Road project would be an "attractive addition to Elkton Road." The Committee was also particularly impressed with how the materials used in the building tie into those other existing buildings adjacent and nearby on Elkton Road. Finally, the Committee concluded that the design proposed for the site meets the Design Guidelines.

Also regarding the building facade, any Planning Commission comments should be based on the review criteria in Subdivision and Development Regulations, Appendix XIV (d).

Subdivision Advisory Committee

The Subdivision Advisory Committee – consisting of the City's Management, Planning and Operating Departments – has reviewed the 109-111 Elkton Road rezoning, major subdivision and special use permit plan and has the comments below. If necessary, the subdivision plan should be revised prior to its review by City Council. The Subdivision Advisory Committee comments are as follows:

1. The Planning and Development Department notes that the proposed mixed use commercial and residential development corresponds directly to recently approved projects in the immediate vicinity on both sides of Elkton Road. The proposed land use at the site also conforms to the land use recommendations in Newark Comprehensive Development Plan IV.
2. The Planning and Development Department suggests that the Planning Commission consider the following as conditions of subdivision approval:
 - That the architectural design for the proposed new building be carried out on all portions of the facility visible from public rights-of-way.
 - That mechanical equipment and utility hardware be screened from public view with materials harmonious with the proposed architectural design or shall be located so as not to be visible from adjoining streets or public rights-of-way;
 - That the refuse storage bins be screened from public view with materials harmonious with the proposed architectural design;
 - That exterior lighting be designed as an integral architectural element of proposed architectural facade. All such lighting to be shielded to limit visual impacts on adjoining residential properties.
3. The Planning and Development Department has concerns about the potential use of commercial space on this site and the adjoining 119 Elkton Road property for academic classroom use. While we recognize that uses of this type support rental income for property owners, the Department has reservations about rezoning property for the purposes of adding additional off-campus classroom space in areas intended for commercial development. Moreover, the combination of rental – primarily student – housing, with classroom space results in what are essentially university type facilities rather than the kinds of businesses that we want to encourage at this location and, in general, downtown. We suggest, therefore that the property be deed restricted so as not to permit university class room uses on the first floor of any buildings at 109-11 Elkton Road.
4. The Planning and Development Department suggests that the Planning Commission recommend that the subdivision agreement specify that the proposed units be designed so that they can be easily converted to condominium apartments.

5. Regarding residential density, as noted above, the 109-111 Elkton Road subdivision plan calls for 21.66 units per acre. To assist the Commission in evaluating this proposed density, we have provided below the units per acre of recently Planning Commission reviewed and City Council approved nearby mixed use commercial/residential projects.

| <u>Development</u> | <u>Location</u> | <u>Units/Acre</u> |
|-----------------------------------|-----------------|-------------------|
| 119 Elkton Road [Reconfigured] | Elkton Road | 21.13 |
| Madeline Station | Elkton Road | 20.31 |
| Amstel Square | Elkton Road | 17.27 |
| The Millyard | Elkton Road | 9.39 |

6. Regarding drainage and stormwater management, the Public Works Department has a series of construction improvement plan comments concerning stormwater control and related technical specifications.
7. The Public Works Department also indicates, regarding refuse collection, that Note #19 on the plan should be revised to indicate that the cross access easement also applies to refuse collection since the dumpsters shown on the site are intended to serve the 109-111 and 119 Elkton Road properties. The Department adds, in this regard, that the subdivision agreement should specify that refuse collection – both residential and commercial – will be the responsibility of the property owner.
8. The Police Department has raised concerns about the availability of parking for the proposed apartments and commercial space. The Department also recommends that no left turns out of the parking facility should be permitted and that bicycle racks should be added to the subdivision plan.
9. The Electric Department indicates the following:
- An open utility easement is required to be noted on the subdivision plan.
 - No trees over 18’ at maturity may be planted under aerial wires along Elkton Road.
 - The applicant will be required to pay \$100 per meter for the proposed apartments and \$350 per meter for any commercial meters; a fee of \$3,600 towards the cost of aerial transformers is also required.
 - If line coverings are needed on the 4KV and 120/240 volt aerial lines along Elkton Road, the developer will be required to pay a to-be determined fee. In addition, the applicant should review scaffolding and related requirements associated with the proximity of the building to the high voltage lines along Elkton Road.
10. Regarding Building Code requirements, the Code Enforcement Division notes the following:
- All buildings must be designed and constructed in accordance with the current International Building Code.
 - The building will be required to be sprinklered.
 - No openings will be permitted on the east wall of the building adjoining the University of Delaware parking garage property.
 - A subdivision identification plan should be shown on the plan.
 - Engineering calculations will be required through the building permit process to verify appropriate water service for the required fire protection system.
 - The plan needs to be revised to show the required 24’ wide fire lane.

- The applicant should review with the City Fire Marshal additional fire safety related requirements prior to the submittal of building permit plans.
11. The Parks and Recreation Department indicates that prior to its review by City Council, the applicant should review with the Department several technical matters and possible tree species replacement and relocation suggestions. The Department adds that the street trees shown on the front of the property should not be installed until completion of the DelDOT Elkton Road project.
 12. The Water and Wastewater Department indicates that water and sanitary sewer service can be made available to the site. The Department adds the following:
 - The cost of all meters will be borne by the applicant.
 - An STP fee will be assigned for the proposed apartments and commercial space, based on a review of the Department.

Recommendation

Because the proposed 109-111 Elkton Road rezoning from BN to BB conforms to the land use guidelines in Newark Comprehensive Development Plan IV, because the proposed mixed use 109-111 Elkton Road major subdivision conforms to recently approved projects in the immediate vicinity of the site, and because the proposed redevelopment of this site, with the Subdivision Advisory Committee recommended conditions, will not have a negative impact on adjoining and nearby properties, the Planning and Development Department suggests **that the Planning Commission make the following recommendations:**

- A. That City Council approve the rezoning of the .277 acre 109-111 Elkton Road property from BN (neighborhood shopping) to BB (central business district), as shown on the attached Planning and Development Department Exhibit A, dated November 3, 2009;**
- B. That City Council approve the 109-111 Elkton Road major subdivision plan, as shown on the McBride and Ziegler, Inc. plan dated October 2, 2009, with the Subdivision Advisory Committee suggested conditions; and,**
- C. That City Council approve the special use permit for apartments in the BB district, as shown on the McBride and Ziegler, Inc. plan, dated October 2, 2009, with the Subdivision Advisory Committee suggested conditions.”**

Ms. Brown: What is the significant difference between BN and BB?

Mr. Lopata: There are two significant differences -- the residential use that is permitted in BB and lot coverage. In BN you can only cover 40% of a lot with a building. In BB you can cover essentially 100%.

Ms. Brown: So you can have 100% coverage?

Mr. Lopata: Again, I'm talking about building coverage.

Ms. Brown: Yes. I mean building coverage.

Mr. Lopata: Well, they have to meet the parking requirements. In a BB zone, which is our downtown zone, which is what we are saying what we want on Elkton Road -- it is implicit in that Plan that you have recommended and Council adopted -- that you are going to want more coverage on this roadway, that this is going to be developed area. Having said that, when you asked the direct question -- what is the key difference? In BN you can't cover as much of a lot with a building.

Ms. Brown: We don't have a restriction on how many units can be on this as far as apartments?

Mr. Lopata: That gets back to parking requirements. Regarding the number of units, you have to have so much square footage of lot area on the site and so many square feet per apartment, which is 800 square feet for each unit. Plus, they must be 300 square feet of lot area for each dwelling.

Mr. Bowman: We will now open this up to the applicant.

[Secretary's note: The applicants, Commission and public referred to the visuals brought by the applicants for their presentation to the Planning Commission].

Ms. Lisa Goodman: Young, Conaway, Stargatt & Taylor, Wilmington, Delaware. I am counsel to the applicant.

We are here tonight with an application for a rezoning, special use application and a site plan for 109-111 Elkton Road, which is one parcel. It is the former site of the Daffy Deli. It is next to the project at 119 Elkton Road, which was just completed being constructed that this Commission and Council approved the rezoning from BN to BB for virtually the identical use, which is retail on the first floor and residential above. This site that we bring you tonight is a continuation of the redevelopment of Elkton Road. My client under various entities has redeveloped the Trap Restaurant site. I know you are all familiar with that as Amstel Square plus the row of townhouses behind Amstel, plus 119 Elkton Road which is the former Pizza Hut site. Now they have the opportunity to come in and do a redevelopment of the Daffy Deli site. All those sites are similar. They were BN zoned to BB and mixed projects.

The plan for this site is for retail on the first floor -- 1,571 net leasable square feet on the first floor with two stories of apartments above, for a total of six apartments. Very consistent with the redevelopment on Elkton Road and, of course, consistent also with the Millyard across the street, Madeline Station and all of these projects that are really extending Main Street in a successful fashion. A lot of towns come up with these comprehensive plans and they say what we would like to see, but you have to have private folks make it happen. Newark has been remarkably successful in actually making your vision happen.

As Mr. Lopata indicated, we submitted the design and met with the Design Review Committee and worked through various iterations. We have the design we started with. If you are interested, we would be happy to share it. It is somewhat similar to this design, but this design has more stone and it is a more detailed design.

This project will be sharing an entrance with 119 Elkton Road, which is great because it will have less traffic conflicts on Elkton Road -- the fewer entrances you have, the better. The entrance is already restricted as to left turns by DelDOT. That is consistent. As Mr. Lopata also indicated, we are also consistent in terms of units per acre. The project next door is 21.13 units per acre, Madeline Station is 10.31, and this project is proposed to be 21.66. It is right there in terms of density.

The only other thing I would like to mention now, and Mr. Lopata brought this up. Mr. Lopata shared his concern about University uses and my clients are fine with the restrictions. As a matter of fact, we have actually proposed to Mr. Lopata somewhat of a more restrictive and yet more flexible restriction. Rather than restricting this new building to no University classroom use, our proposal for your consideration as a recommendation would be to place a deed restriction on both 119 Elkton -- which is us and currently has no restrictions on it -- and this proposed building, for a total of no greater than 1,500 square feet of University classroom use between the two buildings. That is roughly the amount that is in 119 Elkton Road now. 119 Elkton Road is not restricted at all. For example, they have a client going into 119 Elkton Road that has already asked about expansion, which is wonderful. It is a retail client. That would give them the flexibility to potentially move the University to the other building. That seems to make sense. It accomplished the same goal. It just gives us a little more flexibility.

Mr. Lopata: The only wrinkle in that, there is a way of solving it, is these are two separate parcels. They can be sold to different parties. Then you have this restriction bouncing back and forth. The easy way to solve that is to change the subdivision plan and remove the lot

line and make it one parcel. Or if you can come up with another solution. I am just thinking out loud. I don't have a problem with it because it meets the same goal. We don't want to expand the University use, but if the property is sold, then what?

Ms. Goodman: If the property is sold and both properties are burdened by the same restriction, if we run the restriction to the City, the City could still enforce it. It doesn't matter whether they are separate owners. They would simply have to cooperate in terms of revealing who their tenants were.

Mr. Lopata: Is there some reason that removing the lot line is a bad idea?

Ms. Goodman: One of the problems is that they have already signed leases in 119 Elkton Road. There are some exclusivity provisions in there that run to that lot.

Mr. Lopata: We will have to work something out. If the Commission is willing to go along with that suggestion, we will come up with some language to try to cover it.

Ms. Goodman: I think we can work it out. We have certainly done much more complicated things involving deed restrictions in other projects I have worked on.

Ms. Brown: Who are the owners other than this corporation?

Ms. Goodman: It is owned by the LLC. The LLC is permitted to have other members. Kevin Heitzenroder is the managing member.

Ms. Brown: Who is going to manage this property?

Mr. Kevin Heitzenroder: I reside at 271 Beverly Road. I am the managing member of this entity. I constructed in my business Amstel Square. I constructed 119 Elkton Road. Internally, in our own company, we currently manage Amstel Square, 119 Elkton Road and we will manage 111 Elkton Road, both the residential and commercial. We handle the leasing, management, maintenance and everything in-house as well as the construction.

Ms. Brown: You have six units proposed for upstairs?

Mr. Heitzenroder: Correct.

Ms. Brown: How many bedrooms in each unit.

Mr. Heitzenroder: We are still working with the internal design, but approximately four.

Ms. Brown: The number of occupants of each unit?

Mr. Heitzenroder: It depends on what perspective tenants come forward.

Ms. Brown: Is there a restriction on the number of bodies in each unit?

Mr. Lopata: There is a Code restriction on that.

Ms. Brown: What is the Code restriction?

Mr. Lopata: It depends upon the size. It is not the three or four. You are talking about different sets of rules here.

Ms. Brown: It depends upon the size, but he is proposing six units. So, realistically, so many units can only fit in a certain square foot area. What are you talking about square foot wise?

Mr. Heitzenroder: Each unit is approximately 1,200 to 1,300 square feet, would be my best guess based off of 119 Elkton Road, plus or minus, but I would say that is a very close estimate for the square footage of each apartment.

Ms. Brown: Roy, how many bodies would that be?

Mr. Lopata: We would have to know the size of the bedrooms. It is more complicated than how many units for this type of housing.

Ms. Brown: What I am asking is what are you proposing for this?

Mr. Heitzenroder: I am not proposing how many people live in there. What is most common is anywhere from four to six people generally.

Ms. Brown: In each unit.

Mr. Heitzenroder: In each unit. I have never had a group of applications for say two or three because it is a four bedroom unit. I have also never had an application for nine or ten people. As Roy said, there are fire codes and many building restrictions that depending on the size of the unit restrict the number of people that can be in there. But, based off of experience that is generally what we see.

Ms. Brown: My point is, though, that I would prefer that we had fewer bodies. I think six in each unit is big. That is a lot. That is 36 bodies there.

Mr. Lopata: The advantage of more bodies here is less bodies in our traditional single family neighborhoods. That really gets back to this whole point of downtown living. Remember, that is what we are thinking of. Where do we want to put people who are living in apartments?

Ms. Brown: There is a psychological issue, too.

Mr. Heitzenroder: I can speak to 119 Elkton Road and Amstel Square because we have a track record. This isn't the first project that addresses these concerns. We do have units that have six people. I don't have any units that have more than that. We do have some units that have six people and to date it is working extremely well. We comply with the parking rationale on the plan. The great thing about these projects and their proximity to the downtown area is that all the residents don't need a car. We have had no problems with parking or overcrowding. Having six people in a four bedroom unit of that square footage actually works quite well. We are only talking about a couple of people sharing a bedroom. It is not like they are piling in at excessive amounts. The point is it is so close to downtown and the campus that we have had no problems addressing this. As you can tell by going in Amstel Square, Saxby's is open (the coffee house). You can generally go in there at any time of the day and find a parking spot, go in, get coffee, come out. If what I am saying wouldn't be true, we would have a parking nightmare with cars parking all over the place. We just haven't seen it. Not everyone brings their car or needs their car. That amount of occupants has not been one issue at all so far.

Ms. Brown: Do you have handicapped access to the upper levels?

Mr. Heitzenroder: No. For six units, it is not Code required, but typically you see that in a much larger project. When you get over a certain number of units the Code requires it.

Mr. Lopata: Or four floors.

Ms. Brown: What are DelDOT's plans for in front of this project?

Mr. Lopata: They are going to be upgrading Elkton Road. We are in the process of negotiating with them to try to get an additional crosswalk.

Ms. Brown: Is it still going to be two ways there?

Mr. Lopata: It will still be two ways, but it will be three lanes rather than four.

Ms. Brown: Will there be a median?

Mr. Lopata: No, there will be that middle “suicide lane” – the affectionate term. There will be the middle turning lane that they will be using plus the upgraded sidewalks eventually. Council has asked for brick sidewalk improvements.

Mr. Heitzenroder: I would like to make one more comment to answer your question about occupancy and how it all ties together with a viable successful project. We were more than willing to voluntarily meet with the Architectural Review Committee and we have gone, I think, a long way on all the projects that we have done, starting with Amstel Square to notch up the architectural brick and stucco and certain details that we have used on the building that are very expensive, to be quite candid with you. We could save a lot of money by making Code compliant buildings that were less dressed up, less brick, more stucco and more boring. I live in the City. I’m proud of Amstel Square. I’m proud of these buildings. You can see immediately when you walk into these places the quality and level of the construction that is going on. That all comes down to finances. When things get too restrictive then we have to cut costs and we have to build less. It is a balancing act. I think we have done a great job of that. We have given you a great product and had no problems whatsoever to date.

Ms. Brown: I have been driving around Newark and I have been seeing a lot of “For Rent” signs. What is your residency rate at Amstel Square?

Mr. Heitzenroder: All of our projects are 100% full. Let’s go back in time ten years. There was this theory that we wanted to pull tenants out of residential neighborhoods. I remember long hours in this Council Chamber about streets like E. Park Place and Kells Avenue, which are streets that you see the For Rent signs now. The theory was that with the more aggressive development in the downtown area, the people who live on those streets didn’t want rentals next to them.

Mr. Lopata: Plus the rental restrictions.

Mr. Heitzenroder: So, I think these projects are a good thing and you are seeing more For Rent signs because it is pulling people out of the areas where the residents living there didn’t want them. So, I think it is accomplishing what we have set out to accomplish

Ms. Brown: My other concern is the left-hand turn. You are going to potentially add a lot more cars there going in and out. The way it looks now from the drawing there doesn’t really seem to be any deterrent to a left-hand exit turn there.

Mr. Heitzenroder: We aren’t the Police but we have taken the Daffy Deli site, which currently has two means of egress. It has one on each side of the building. Our project at the Pizza Hut had two as well. In totality, I am going from four entrances down to one entrance for both projects. In terms of safety it has to be safer in that we have one entrance where people are exiting instead of the four that used to exist. DelDOT has already restricted us in the entrance we will be using that no one can turn left there.

Ms. Brown: How?

Mr. Heitzenroder: There is a big sign.

Ms. Brown: How often do you obey all the signs that you see?

Mr. Lopata: I have already told Kevin and Lisa that we are talking about signage here. Kevin is making the most important point here. We have gone from four access-ways to one. That is a significant improvement without the left-turn restrictions. Now we are adding that. Will it be obeyed in all cases? No, it never is just like stop signs aren’t. That doesn’t mean you stop using them. It’s the other way around.

Ms. Brown: My point is, I think we need to do something to make sure that they do not turn left. I don’t know what you are going to do. There is a lot of traffic on that road and there are a lot of pedestrians. We did have a young gal run over by a bicycle by a truck turning left up farther. The point is people turn there all the time. I think it is important to be a little

more aggressive in doing some curb cuts or something. I don't know what. I'm not an engineer.

Mr. Heitzenroder: The plan is currently being reviewed by DelDOT in conjunction with this development plan. We obviously don't have the right to go out in the street.

Ms. Brown: No you don't but you have curb cuts and ways that you can get people in and out there. That is your job.

Mr. Heitzenroder: That entrance permit and plan will be reviewed by DelDOT and their engineering staff. We haven't even gotten to it at this point, but we certainly will be happy to take those thoughts to them as it's reviewed.

Mr. Bowman: The problem you have with trying to put physical barriers in a single driveway like that is that you are going to get crosswise with emergency services vehicles. If you raise curbs or put a raised island barrier in there to try to force traffic to turn right, you will create some real problems particularly for fire apparatus getting in and out of there. I understand where you are coming from but I think really the only true way to deal with this is with signs now and a ticket or two that will remind people if they get slapped with a \$50 fine that they are not supposed to do it.

Ms. Goodman: I have done lots of projects where DelDOT says, no left turns, rights in and rights out only. We sign the properties. We used to try to make those channelized entrances and they don't work. What happens is somebody who really wants to turn left will jump the curb. Then you have an even worse situation. So, DelDOT is now taking the position that you sign them and you have the police ticket them. It works pretty well. It doesn't work 100%. When DelDOT really thinks it is important, they put a median up to prevent turns. But, DelDOT has to balance that with what other interests there are on the street in terms of their plans and what they want to see happen.

Ms. Mary Lou McDowell: If you are going to have the suicide lane, as you called it, in the middle, are there going to be signs saying that there won't be any left turns from Elkton Road into it?

Mr. Lopata: That is what the lane is for.

Ms. McDowell: So, then you wouldn't be able to do any kind of channelized thing.

Mr. Lopata: That is the problem to get into the site with a left hand turn.

Ms. Kass Sheedy: Did I hear correctly that the driveway is just one lane?

Ms. Goodman: The driveway is two lanes but it is a shared entrance with 119 Elkton Road.

Ms. Sheedy: I understood that, but when we were talking about the left and right turn.

Ms. Goodman: It is two way.

Mr. Bowman: Roy, what is the intent of the suggested no classroom restriction?

Mr. Lopata: The intent is to try to ensure that this commercial downtown type development is not simply overflow space for the University of Delaware. Frankly, as I said to the applicant, from the Planning and Development Department's standpoint, we are not interested in rezoning properties to provide more land for the University classroom in a building that is already going to house students as occupants on the upper floor. Why not just build a classroom building on campus then? If the Commission doesn't agree with me, that's fine.

Mr. Bowman: The other thing that crossed my mind is, if you have 25 or 30 students showing up here at one time, not all of them will be walking. Some of them are going to be hunting a parking place. That creates a little bit different kind of situation there.

Mr. Lopata: I think that is a short-term situation, frankly, from my understanding of the University's needs. That is why, just to be on the safe side, this is a new wrinkle. We learn by doing here in Planning, we see something and we react to it.

Mr. Bowman: Are they that short of classroom space that they are wondering out in the neighborhoods looking for spots?

Mr. Lopata: I can't imagine once their new Chrysler site gets going, that that they will be an issue.

Mr. Bowman: I would hope not. Not with 272 acres and a few hundred thousand square feet of buildings.

Mr. Heitzenroder: Mr. Bowman, just to address that comment regarding students' cars, classroom space. We had the same concern. They are University classrooms, but they are special uses where the University has a situation that quickly arises. They need a short-term space to fulfill a need, which is what we had. We have three to five year term with them, and most likely it will extinguish after that. But, we restricted them to not be able to park there at all. The students that come to that building must park elsewhere on University grounds and walk or ride their bike.

Ms. Goodman: There is the parking garage right next door.

Mr. Bowman: But, that costs money.

Ms. McDowell: You said you had discussed another crosswalk somewhere on Elkton Road.

Mr. Lopata: We have talked about a crosswalk with DelDOT just north of this property from the garage to the Buffalo Wild Wings building that would serve this area and then one up at Beverly Road, which is an intersection that has no crosswalk. We think we have made some progress. We may get a least one. The reason we brought this up is it is a long distance between Amstel and Elkton Road and Apple and Elkton Road. Two crosswalks would make sense there. We actually walked Elkton Road with DelDOT, then got into this issue a where we should have these crosswalks. They seem like they have agreed, at least, to the one near this site. They may not do the one at Beverly and Elkton Road.

Mr. Bowman: We will open the discussion to the public.

Mrs. Jean White: 103 Radcliffe Drive. In light of the way Elkton Road has been going with the building of the four-story University parking garage and other changes, I think that this is a good proposal and is justified.

The picture at top is the formerly Daffy Deli. The second picture is the building that is newly built by Kevin on the right. It has already been pointed out that with this project two curb cuts will be eliminated. That is another positive attribute of this project. I think it is a creative thing to have one entrance/exit between the two buildings that Elkton LLC is going to own and a "T" to go off in either direction behind the buildings for the parking.

I wanted to point out a very large oak tree that is not actually on the property in question, but is immediately outside the fence. I wanted ask the developer if great care can be taken on the roots where part of them are underneath the macadam.

I was wondering why no openings were allowed on the side where the University parking garage is, and secondly, if that meant that there could still be windows but sealed windows that couldn't open.

Mr. Lopata: The openings are Building Code requirement.

Mrs. White: I know there is a code when a building is very close for fire codes, but this seems pretty far away from that.

Mr. Lopata: The distance to the property line.

Mrs. White: So, that means there can't even be glass windows that are unopened?

Mr. Lopata: I think there can be small openings but they have to be sealed. I would have to look into that, but I don't think they can be windows of the type you are talking about.

Mrs. White: I think it is a shame. It is going to be very dark inside and I was wondering if there was any way around it.

Mrs. White: The final thing I wanted to talk about is the parking requirements. When I was looking at the blueprint, I feel that this is not correct. When you tear down a building, you lose any parking you had before. And, the applicant talks about grandfathering the existing two apartments. Based on the existing conditions of the retail you are subtracting a certain amount of the existing retail. I calculate by this project, if there are six four-bedroom apartments you would need 18 parking spaces for the apartments, then if you have 1,571 square feet of leasable retail space, you would need eight parking spaces or stalls for that. You would need 26 all together. Only 19 are given. The applicant says that part of that is met by the grandfathering because of the Daffy Deli building, but when you tear that down, you don't keep those parking spaces. So, that is incorrect.

Mr. Lopata: They have a year of grandfathering.

Mrs. White: For what?

Mr. Lopata: For the grandfathering.

Mrs. White: How long has it been empty?

Mr. Lopata: Less than a year. That is how it qualifies, Jean. That is what the Code says. You may not see it, but that is the way it is.

Mrs. White: I can see a building that exists and is built onto.

Mr. Lopata: That is standard we have used for generations.

Mrs. White: There is something wrong with that.

Mr. Lopata: Remember, what was there was the Daffy Deli plus the two apartments. That's how the zoning looks at this -- what is new on the site?

Mrs. White: But, those are being eliminated completely.

Mr. Lopata: It is being replaced by a new building, but the "use" lasts for a period of a year. They need to hurry up.

Mrs. White: I think there is something wrong. We have a rezoning as well from BN to BB.

Mr. Lopata: Right now the building right next to it and the other buildings up and down Elkton Road have the same situation, and Mr. Heitzenroder just talked about the Crab Trap and the Amstel Square situation where they are not having a parking problem, putting aside the zoning issue. The reality is, they don't have one.

Mrs. White: I can't argue with the Planning Director, but I think there is something wrong with this.

Mr. Ralph Olivier: I am the architect for the project. I reside at 268 Chesterville Road, Landenberg, Pennsylvania. As Mr. Bowman is quite aware, the International Building Code, which is what the City of Newark enforces permits, I believe the number is up to 15% of the wall area may be windows when you are three feet or more away from the property line. So, we have been very careful to be a minimum of three feet away from the property line so that we are permitted to have 15% of the wall area as windows. If you look at 119 Elkton Road, that is exactly what we have there. In fact we have less than 15% of the wall

as windows. The windows are quite large and more than adequate for each individual apartment.

Mr. Bowman: We will bring the discussion back to the table.

Ms. Brown: I would like to see a restriction on the number of occupants per building in the rental units.

Mr. Lopata: You mean per unit.

Ms. Brown: Per unit, but I was wondering about the total number.

Mr. Lopata: I just want to remind the Commission that I think we should try to be consistent on Elkton Road.

Ms. Brown: And what is the consistent number?

Mr. Lopata: We haven't used them on Elkton Road. We have done these things on Main Street where there is more of a parking issue.

Ms. Brown: I agree with Jean about the parking. Are there going to be two retail units in there?

Mr. Lopata: There is 2,600 square feet of space. It could be one, two or three retail units.

Ms. Brown: I know we are trying to encourage pedestrian use.

Mr. Lopata: Actually, what we are trying to encourage is development at locations like this. We are concerned when people are making investments of this type – and Kevin touched on it – we want to put realistic restriction. In fact, any restriction will be different than the one next door.

Ms. Brown: By his own admission, he said four to six people. Is that a number they are comfortable with?

Ms. Goodman: If I might add, Mr. Lopata talking about consistency and wanting to have the student housing here. We have no restrictions on 119, no restrictions on the Amstel Square building, and no restrictions on the townhouses. Those are all working fine. These are new buildings. They have higher rent because they are nice buildings. They are really self-regulating, but you make them hard to finance and build the more you restrict them and start pushing students into areas that, I think, we are working hard to not push them in. It has worked very well and for consistency, our request would be to let the market and the manager manage these properties. They have a good track record and they just don't have issues.

Ms. Brown: If we don't put these restrictions in and these folks sell it to somebody as it gets older, it is not as desirable and you all sell it, then we are stuck with an unlimited number of bodies crammed into these buildings.

Mr. Lopata: Up to the Housing Code limitation.

Ms. Brown: What is the Housing Code?

Mr. Lopata: It is not unlimited. There is a number. It may be 7 or something like that.

Ms. Brown: That's too many.

Mr. Lopata: Peggy, I respectfully disagree with you. These are the kinds of projects that we want to encourage density. Let's look at Elkton Road, which has Christina Mills, Towne Court, Park Place, and West Knoll Apartments. There are no restrictions of this type on any of these apartment complexes. Here is a case where someone is building a new attractive

building and removing what looks like an eyesore, it seems to me a little bit of overkill to restrict it that way.

Mr. Bowman: Also keep in mind that the City has the option to put in ordinances as needed to deal with that down range.

Mr. Lopata: On Main Street in the Formal Affairs, I was the one proposing a restriction because I think it is a different situation there. The Commission did not go along with my much harder restriction suggested by Planning because there was a parking waiver, there is a real downtown crunch for parking. At the moment we don't see that on Elkton Road.

MOTION BY McDOWELL, SECONDED BY SHEEDY THAT THE PLANNING COMMISSION MAKES THE FOLLOWING RECOMMENDATIONS TO CITY COUNCIL:

- A. THAT CITY COUNCIL APPROVE THE REZONING OF THE .277 ACRE 109-111 ELKTON ROAD PROPERTY FROM BN (NEIGHBORHOOD SHOPPING) TO BB (CENTRAL BUSINESS DISTRICT), AS SHOWN ON THE ATTACHED PLANNING AND DEVELOPMENT DEPARTMENT EXHIBIT A, DATED NOVEMBER 3, 2009;
- B. THAT CITY COUNCIL APPROVE THE 109-111 ELKTON ROAD MAJOR SUBDIVISION PLAN, AS SHOWN ON THE MCBRIDE AND ZIEGLER, INC. PLAN DATED OCTOBER 2, 2009, WITH THE SUBDIVISION ADVISORY COMMITTEE SUGGESTED CONDITIONS; AND,
- C. THAT CITY COUNCIL APPROVE THE SPECIAL USE PERMIT FOR APARTMENTS IN THE BB DISTRICT, AS SHOWN ON THE MCBRIDE AND ZIEGLER, INC. PLAN, DATED OCTOBER 2, 2009, WITH THE SUBDIVISION ADVISORY COMMITTEE SUGGESTED CONDITIONS.

VOTE: 4-0

AYE: BOWMAN, BROWN, McDOWELL, SHEEDY

NAY: NONE

ABSENT: BEGLEITER, DRESSEL

MOTION PASSED UNANIMOUSLY

3. REVIEW AND CONSIDERATION OF AN AMENDMENT TO THE ZONING CODE INCREASING THE PARKING WAIVER FEE FOR DOWNTOWN RESIDENTIAL UNITS.

Mr. Lopata summarized his report for the Planning Commission which reads as follows:

“The Planning and Development Department has prepared the following report, as a follow-up to the discussion and commentary at the September 28, 2009 City Council meeting during the Council’s review of several downtown development projects that included parking waivers. As a result of some of the concerns raised during the discussion regarding the “fee in lieu of spaces” charged for downtown development projects with residential components, the Planning and Development Department has provided below a proposed Zoning Code amendment for the Planning Commission’s review and consideration. Please also note that the most current cost estimate provided by the Public Works Department and used to calculate the total fee charged applicants is \$5,833 per space. This fee represents the cost to construct one surface level parking space.

Parking Waiver in Lieu of Spaces Fee Amendment

In order to increase the fee paid to the City for downtown parking waivers with residential components – and thereby take into account the need for “24 hour” parking for

downtown residents – the Planning and Development Department suggests that the Planning Commission consider the following Zoning Code revision that would establish a separate and higher fee for parking waivers that includes residential uses.

Amend Zoning Code Section 32-45(b) “*BB Central Business District Off-Street Parking Option,*” by replacing subsection (9) which reads as follows:

“(9) Required parking waiver in lieu of spaces payments.

Applicants receiving off-street parking standard reductions shall be required to pay to the city a fee in lieu of the required spaces subject to the following:

a. Payments shall be assessed for a percentage of the cost of construction of off-street surface level spaces based on the following fee schedule:

FEE SCHEDULE

| <i>Parking Space Standard Reduction</i> | <i>Cost of Construction</i> |
|---|-----------------------------|
| First 5 spaces | 5% |
| 6 to 25 spaces | Up to 50% |
| Each space over 25 | Up to 100% |

b. The cost of surface level parking spaces shall be computed by the planning department, with the assistance of the public works department, through the off-street parking standard waiver process, and included in the planning department report to the planning commission concerning the parking standard reduction. In developing such costs, the planning department may also include in its report to the planning commission, applicant’s in-kind services, land donations, granting of easements or rights-of-way, or similar parking improvement activities that the commission may consider in assessing the payments required in this section.”

With the following:

“(9) Required parking waiver in lieu of spaces payments.

Applicants receiving off-street parking standard reductions shall be required to pay to the city a fee in lieu of the required spaces subject to the following:

a. Payments shall be assessed for a percentage of the cost of construction of off-street surface level spaces required for each use category based on the following fee schedule:

FEE SCHEDULE FOR REQUIRED NON-RESIDENTIAL SPACES

| <i>Parking Space Standard Reduction</i> | <i>Cost of Construction</i> |
|---|-----------------------------|
| First 5 spaces | 5% |
| 6 to 25 spaces | up to 50% |
| Each space over 25 | up to 100% |

FEE SCHEDULE FOR REQUIRED RESIDENTIAL SPACES

| <i>Parking Space Standard Reduction</i> | <i>Cost of Construction</i> |
|---|-----------------------------|
| First 5 spaces | 25% |
| 6 to 25 spaces | up to 75% |
| Each space over 25 | up to 100% |

b. The cost of surface level parking spaces shall be computed by the planning and development department, with the assistance of the public works department, through the off-street parking standard waiver process, and included in the

planning and development department report to the planning commission concerning the parking standard reduction. In developing such costs, the planning and development department may also include in its report to the planning commission, applicant's in-kind services, land donations, granting of easements or rights-of-way, or similar parking improvement activities that the commission may consider in assessing the payments required in this section."

By way of example, this fee increase for the recently approved 129 E. Main Street project ["Formal Affairs"] would have resulted in a parking waiver increase from \$21,874 actually charged to \$37,914.50.

Recommendation

The Planning and Development Department suggests that the Planning Commission consider the proposed Zoning Code amendment in this report, receive public input, and make a recommendation to City Council."

Mr. Lopata: I will be happy to answer any questions.

Ms. Brown: Who does this impact?

Mr. Lopata: This will impact new projects going forward. There are more on the horizon.

Ms. Brown: How many possible properties do we have that this is going to impact?

Mr. Lopata: It could impact the Newark Shopping Center if they come in with a redevelopment plan someday. It could impact any of the projects/buildings on Main Street that don't have upper floors or get redeveloped. If you go back 25 years you wouldn't imagine the buildings that you see now. It is hard to answer that question is what I am getting at. Regardless, it will have an impact. You can be sure of that. By-the-way, it would have an impact on the BB zoned properties on Elkton Road if some of them need a parking waiver, which may happen someday.

Ms. McDowell: Do you think this would make more developers argue against deed restricting the number of tenants to make up the money . . .

Mr. Lopata: You will hear that argument as sure as we are sitting here. We have used that in the past downtown. When you have a site that doesn't have enough parking by Code, then I think we need to look at it a lot differently than a site that meets the Code even if we don't agree with what the Code says. Putting that aside, assuming we have the Code as it is written, this is, I think, a very important step forward. We keep raising this fee. The City has made some large off-street parking impacts with the, for example, in terms of Lot #5 and upgrades to our current lots. Regarding the potential someday for building additional parking -- we have ideas in the works and we need money for them. We can't continue to build downtown without coming to grips with this parking challenge.

Ms. Brown: Did you read the comments in Pamela Bobbs letter?

Mr. Lopata: I read them and commented to her directly.

Ms. Brown: She has a legitimate comment about people not wanting to sit in metered spaces.

Mr. Lopata: Parking at meters are the most valuable spaces. That is a whole other issue that is not before us tonight. We are talking about parking waiver fees that developers will pay.

Ms. Brown: This may someday help us build a parking garage.

Mr. Lopata: In theory. Remember, we are also talking about a downtown above ground utility impact fee.

Mr. Bowman: We have a lot better chance of building a parking garage than we do burying wires.

Mr. Lopata: We don't have the money to do it, and in light of the economic downturn a garage isn't in the immediate future. We've used and continue to use this fund. We have made a lot of improvements in parking. The Residents Survey that we just completed showed continued positive responses for downtown parking, even with the increase in parking meter rates, which we were stunned about. We raised the rates this past winter, we sent the survey out, and people are still happier about parking than they used to be. We really did not expect that.

Ms. Brown: You expanded the parking lot behind Caffè Gelato. It is much more user friendly.

Mr. Lopata: We are going to be repaving that lot shortly in the next year. That is part of where these funds go. We also have security cameras there now.

Ms. Sheedy: Roy, is the intent of this fee to discourage developers from having too little parking or to accumulate funds for new parking facilities?

Mr. Lopata: I think it is to do three things. You mentioned two of them – first, to make sure that they have as much parking as possible, secondly, to discourage developers from having too little parking and, finally, limiting spaces downtown for residential units. The key thing here is residents are 24-hour parkers. That is why that parking should cost more, because they are there all the time. The customers go in and out. The other thing is to try to make sure that developers understand downtown is not just a residential development. Lately we are seeing these projects with the emphasis on residents. We spend more time discussing the residents than we do about the commercial part of these projects. On the other hand, we have to understand, this is a university town. I think we all recognize that. This student housing drives a lot of these projects and that has a good side and a bad side. The good side is, it is working. We are succeeding at getting rental units in the older sections of the City turned into owner occupancy. It is a slow process. We have gotten to the point that we have a lot of projects downtown and now, I think, it is time to take a breath and this will help us do that. We may revisit this again and say it is too high.

Ms. Sheedy: My question comes from, if it is high enough?

Mr. Lopata: I don't know. We will find out.

Ms. Sheedy: Because maybe you are talking about 1% of construction cost and I would expect that in your example of Formal Affairs it may be 2% of construction cost.

Mr. Lopata: I don't know. It is a nice amount of money - \$38,000 for six units. That is really what we are getting. It remains to be seen how this works.

Mr. Bowman: Did you do any community comparison with other communities?

Mr. Lopata: This is high. We are one of the first cities in the nation to have a parking fee. Others ask us all the time. We are on the cutting edge.

Ms. Sheedy: One of the things that seems to be happening as requests for parking waivers come up is, there has been a precedent set for giving parking waivers and each individual request for parking waivers may very well have merit and there may be a fairness test that goes to it. If we have given a parking waiver to the last 15 applicants, then, I think some of us feel almost an obligation.

Mr. Lopata: Let me reassure you. You don't have an obligation. We may have forgotten the CVS case. We won that case. We turned down a parking waiver in a new

subdivision. The key bit of information I had to provide in the deposition is that the City has turned down parking waivers. Not a lot of them, but we have turned down enough of them over time for a variety reasons. The State Superior Court, and ultimately the Delaware Supreme Court, upheld our right to do what we have been doing. The Courts said we could turn down that parking waiver. In that case, we thought 15 units was too many. We stuck to our guns and it turned out that we wound up getting what we wanted to get at that location – fewer units.

In any case, regarding parking waivers, we adopted these regulations in 1986 or 1987 when Main Street was turning into a ghost town. We had lots of vacant businesses. The parking waiver is by far the most significant tool we have had for economic development in the history of the City. Without it Main Street would not have had the renaissance which we have had because, frankly, there is not enough parking on the individual lots to meet the Code. In the past, we had a few variances. The Grand Opera House started this in the early 1980s. They went to the Board of Adjustment in pre-parking waiver days and it was a huge struggle because the Board, rightly so, said what is the hardship? Everybody has this hardship. Why should we give this one? In any case, they did.

In any case, the Planning Director started thinking about this and decided that this is not a good way to do this. We need to do it on the “planning” side rather than the Board of Adjustment side. Subsequently, Caffé Gelato, Iron Hill, the Home Grown building, the Bank of Newark building, and ones we have done just recently all of them we approved as parking waivers.

I will give you an example of what we have also done with parking waivers. The Rhodes Drug Store building, which is now a bagel deli, that building is a National Register property. That is on the National Registry of Historic Places. Being on the National Register is meaningless. It preserves nothing other than if Federal funds are used. So, we used the parking waiver to require that they preserve that façade. Every owner subsequently has had to preserve that façade. To this day we have preserved that National Registered façade because of the parking waiver.

So, I get nervous when we monkey around with this too much. But saying that, the fee part of this change is something I think is a good idea because of the residential component of this project. I think we have also come to the point where we are getting concerned about the size of these residential projects.

Ms. Sheedy: I raised the issue not because I think every student who rents a bedroom in the downtown area should be allowed to park their Hummer in town.

Mr. Lopata: That is what this was also supposed to do.

Ms. Sheedy: I really do support limiting reliance on internal combustion engines whenever possible. I’m just concerned that it has become kind of pro forma and is not restrictive enough so that developers will think and plan for not having the parking waivers.

Mr. Lopata: We have turned them down and can turn them down. We have already had court decisions that, thank goodness, ratified our ability to say no. The lawyers used your argument in a sense on the other side. We have approved them so the City should keep approving them, and the judge said no, you can pick and choose based on the circumstances.

Mrs. Jean White: 103 Radcliffe Drive. I wholeheartedly support this Zoning Code amendment. I do agree that a resident that is there 24 hours a day or their car might be there that amount of time really needs to be treated differently in the Code in this case of the parking waivers. I think keeping the other and raising it for parking waivers that have to do with residents in the downtown area is totally acceptable and should happen.

My questions are, the \$5,8333 per parking space estimate now, when was that last changed?

Mr. Lopata: The summer of 2008.

Mrs. White: That amount is not written into the Zoning Code itself, so what I was wondering is . . .

Mr. Lopata: Section B makes reference to it. “The cost shall be computed by the Planning and Development Department.”

Mrs. White: It makes reference to it, but in other words, if I just picked up the Municipal Code I wouldn’t find it in there. So, this can just be raised without Council approving the raise. Is that right?

Mr. Lopata: Typically what has happened is Council has asked us to reexamine it.

Mrs. White: Council might ask you, but when it is done the public doesn’t know it’s happened. I’m not sure the public should know or maybe the developers would have more of an interest than someone like me who is not developing. But, does it get changed every year or two?

Mr. Lopata: At the moment it may have gone down. The cost of construction is probably lower than it was then.

Mrs. White: If you were asked by a developer to justify that number, I’m sure it is not a number that they just pick out of a hat.

Mr. Lopata: The Public Works Director goes through an exercise to produce the number. It is a very specific number.

Mrs. White: Will this change in the Code include the Elkton Road of the downtown?

Mr. Lopata: Everything that is zoned BB.

Mrs. White: The Eagle Diner project that has not been to Council yet, but has been to Planning Commission, they would be exempt from this?

Mr. Lopata: This only goes into effect for anyone who applies after it is in the Code.

Mrs. White: The applying includes even just talking to you?

Mr. Lopata: No, it is submitting an application, fee and plans. There is a specific date which you see on my reports.

Mrs. White: But, does it include if they just put a sketch plan in?

Mr. Lopata: No.

Mrs. White: The “up to”, which, of course, is not a change because it was in here even under the present not yet changed Code, but is that really only done for the examples that you have such as applicants’ in kind services, land donations, granting of easements, similar parking improvements.

Mr. Lopata: That is part of it.

Mrs. White: Would there be any other reason besides those?

Mr. Lopata: There might be some oddball circumstance. Let’s suppose someone is proposing some use as part of this project, even a residential owner occupant use or something where they are going to have no rentals or there is something that Council and the Planning Commission jumps for joy and says this is the greatest plan we have ever seen. We will reduce the fee to “48%.” But, really, it is more like the in kind donation –

they are going to bury the electric lines – to throw out an example. And, we say, okay, we will reduce the fee.

Mrs. White: Basically, there would be something that would be so specifically good for the City.

Mr. Lopata: Typically, they give the land.

Mrs. White: I think is good. I think it is good that you have written it up and I support it.

Mr. Bowman: The Chair will entertain a motion on the proposed amendment to the Zoning Code.

MOTION BY SHEEDY, SECONDED BY McDOWELL THAT THE PLANNING COMMISSION RECOMMENDS THAT CITY COUNCIL AMEND THE ZONING CODE AS FOLLOWS:

AMEND ZONING CODE SECTION 32-45(B) “*BB CENTRAL BUSINESS DISTRICT OFF-STREET PARKING OPTION*,” BY REPLACING SUBSECTION (9) WHICH READS AS FOLLOWS:

“(9) REQUIRED PARKING WAIVER IN LIEU OF SPACES PAYMENTS.

APPLICANTS RECEIVING OFF-STREET PARKING STANDARD REDUCTIONS SHALL BE REQUIRED TO PAY TO THE CITY A FEE IN LIEU OF THE REQUIRED SPACES SUBJECT TO THE FOLLOWING:

- c. PAYMENTS SHALL BE ASSESSED FOR A PERCENTAGE OF THE COST OF CONSTRUCTION OF OFF-STREET SURFACE LEVEL SPACES BASED ON THE FOLLOWING FEE SCHEDULE:

FEE SCHEDULE

| <i>PARKING SPACE STANDARD REDUCTION</i> | <i>COST OF CONSTRUCTION</i> |
|---|-----------------------------|
|---|-----------------------------|

| | |
|--------------------|------------|
| FIRST 5 SPACES | 5% |
| 6 TO 25 SPACES | UP TO 50% |
| EACH SPACE OVER 25 | UP TO 100% |

- d. THE COST OF SURFACE LEVEL PARKING SPACES SHALL BE COMPUTED BY THE PLANNING DEPARTMENT, WITH THE ASSISTANCE OF THE PUBLIC WORKS DEPARTMENT, THROUGH THE OFF-STREET PARKING STANDARD WAIVER PROCESS, AND INCLUDED IN THE PLANNING DEPARTMENT REPORT TO THE PLANNING COMMISSION CONCERNING THE PARKING STANDARD REDUCTION. IN DEVELOPING SUCH COSTS, THE PLANNING DEPARTMENT MAY ALSO INCLUDE IN ITS REPORT TO THE PLANNING COMMISSION, APPLICANT’S IN-KIND SERVICES, LAND DONATIONS, GRANTING OF EASEMENTS OR RIGHTS-OF-WAY, OR SIMILAR PARKING IMPROVEMENT ACTIVITIES THAT THE COMMISSION MAY CONSIDER IN ASSESSING THE PAYMENTS REQUIRED IN THIS SECTION.”

WITH THE FOLLOWING:

“(9) REQUIRED PARKING WAIVER IN LIEU OF SPACES PAYMENTS.

APPLICANTS RECEIVING OFF-STREET PARKING STANDARD REDUCTIONS SHALL BE REQUIRED TO PAY TO THE CITY A FEE IN LIEU OF THE REQUIRED SPACES SUBJECT TO THE FOLLOWING:

- c. PAYMENTS SHALL BE ASSESSED FOR A PERCENTAGE OF THE COST OF CONSTRUCTION OF OFF-STREET SURFACE LEVEL SPACES REQUIRED FOR EACH USE CATEGORY BASED ON THE FOLLOWING FEE SCHEDULE:

FEE SCHEDULE FOR REQUIRED NON-RESIDENTIAL SPACES

PARKING SPACE STANDARD REDUCTION COST OF CONSTRUCTION

| | |
|--------------------|------------|
| FIRST 5 SPACES | 5% |
| 6 TO 25 SPACES | UP TO 50% |
| EACH SPACE OVER 25 | UP TO 100% |

FEE SCHEDULE FOR REQUIRED RESIDENTIAL SPACES

PARKING SPACE STANDARD REDUCTION COST OF CONSTRUCTION

| | |
|--------------------|------------|
| FIRST 5 SPACES | 25% |
| 6 TO 25 SPACES | UP TO 75% |
| EACH SPACE OVER 25 | UP TO 100% |

- d. THE COST OF SURFACE LEVEL PARKING SPACES SHALL BE COMPUTED BY THE PLANNING AND DEVELOPMENT DEPARTMENT, WITH THE ASSISTANCE OF THE PUBLIC WORKS DEPARTMENT, THROUGH THE OFF-STREET PARKING STANDARD WAIVER PROCESS, AND INCLUDED IN THE PLANNING AND DEVELOPMENT DEPARTMENT REPORT TO THE PLANNING COMMISSION CONCERNING THE PARKING STANDARD REDUCTION. IN DEVELOPING SUCH COSTS, THE PLANNING AND DEVELOPMENT DEPARTMENT MAY ALSO INCLUDE IN ITS REPORT TO THE PLANNING COMMISSION, APPLICANT'S IN-KIND SERVICES, LAND DONATIONS, GRANTING OF EASEMENTS OR RIGHTS-OF-WAY, OR SIMILAR PARKING IMPROVEMENT ACTIVITIES THAT THE COMMISSION MAY CONSIDER IN ASSESSING THE PAYMENTS REQUIRED IN THIS SECTION."

VOTE: 4-0

AYE: BOWMAN, BROWN, McDOWELL, SHEEDY

NAY: NONE

ABSENT: BEGLEITER, DRESSEL

MOTION PASSED

There being no further business, the Planning Commission meeting adjourned at 9:20 p.m.

Respectfully Submitted,

Elizabeth Dowell
Secretary, Planning Commission